

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway Company that,

(1) The Carrier violated the terms of the Mediation Agreement Case A-2070 when it required H. V. Chafin to attend a Regional Better Service Conference at Bluefield, West Virginia on his assigned day of rest, January 14, 1948 without compensation therefor instead of giving him a day of rest in accordance with the agreement; and that

(2) H. V. Chafin shall be compensated for 8 hours at the rate of time and one-half for having been required to attend the Regional Better Service Conference at Bluefield, West Virginia on his assigned day of rest on January 14, 1948.

JOINT STATEMENT OF FACTS: An agreement bearing date December 1, 1939, as to working conditions and September 1, 1947, as to rates of pay, is in effect between the parties to this dispute.

Claimant H. V. Chafin occupied and was regularly assigned to the position of Operator-Clerk at Iaeger, West Virginia, at the time this claim arose, which required a Sunday assignment of his regular week day hours. Wednesday was the assigned day of rest for the occupant of this position.

On January 9, 1948, claimant was instructed to arrange to attend a Regional Better Service Conference at Bluefield, West Virginia on Wednesday, January 14, 1948.

Pursuant to the Carrier's instructions claimant attended the above mentioned conference on Wednesday, January 14, 1948.

Claim for pay for eight (8) hours at the time and one-half rate under Section 1 (a) Article 1 of Mediation Agreement dated Chicago, Illinois, July 13, 1945, was made in behalf of the claimant.

The Carrier declined the claim.

POSITION OF THE EMPLOYEES: The following quoted Section of Mediation Agreement, Case A-2070, effective March 1, 1945 establishing one Rest Day without pay in each consecutive period of seven days for employees occupying a position requiring a Sunday assignment of the regular week day hours, is invoked in this case of dispute;

"Section 1—

"(a) An employee occupying a position requiring a Sunday assignment of the regular week day hours shall be given one (1) rest day

There is no provision in the above quoted rule, or in any other rule of the Telegraphers' Agreement, authorizing compensation for attending meetings of this nature. Therefore, there is no basis for the instant claim.

It is the position of the Carrier the claim is not supported by the rule relied upon by the Employees, or by any other rule of the Telegraphers' Agreement, and denial of the claim is respectfully requested.

OPINION OF BOARD: This docket comes to this Board on a joint statement of facts. By letter from his Superintendent dated January 9, 1948, Claimant was advised of his appointment as a member of a Regional Committee and was instructed to attend a Regional Better Service Conference at Bluefield, West Virginia on January 14, 1948. In the letter it was also stated that expense or loss of time incurred would be at the Railway's expense in accordance with past practice. January 14, 1948 was Claimant's regularly assigned rest day on his position of Operator-Clerk at Iaeger, West Virginia which required a Sunday assignment of his regular daily hours. Employees filed claim on behalf of Claimant, relying on Section 1 (a), Article 1, of the Mediation Agreement (Rest Day Rule). Carrier declined the claim on the ground that it is not supported by said Agreement.

This Board has had occasion to consider many claims (some interpreting specific rules on the subject and others applying general rules to the given state of facts) in connection with attendance of employees at investigations and rules examination outside the hours of their regular assignments or on rest days. The holdings of such Awards, as has been previously pointed out in other Opinions of this Board, are not in harmony. The later Awards have sustained claims of such nature in cases where the Claimant had no "mutuality of interest." The present case, however, involves a somewhat different set of facts than those previously considered by this Board for the reason that here the employee's attendance was not for the same purpose as those involved in the other Awards. In view of the fact that these Better Service Committees have been in existence for about twenty years, it is strange that neither the Carrier nor the Employees have cited any instances on the property where a similar situation was considered by the parties.

From the joint statement of facts it is apparent that appointment to the Regional Service Committees is controlled by the Carrier and that the Superintendent is the selecting officer. It is clear that the notice to attend the meeting, while not couched in mandatory language, does contain language which indicates that the recipient is expected to attend. From a supervising officer, such language has a very persuasive effect, tantamount almost to a command. This is recognized by the Carrier for in the submission in which it joined, it agreed the "claimant was instructed to arrange to attend * * *." Clearly, Carrier recognized the benefit it received from the functioning of these Committees for it did compensate the members for loss of time in attending. Here, by Agreement, the Claimant had a regularly assigned rest day, a day on which his time was his own, to be spent as he saw fit. Yet Carrier instructed him to spend it otherwise, for a purpose which it recognized as beneficial to it. Can it be said that he suffered no "loss of time" just because he was on his rest day? We think not. By reason of his employer's wishes, this time was lost to Claimant for his own purposes to the same extent as it would be had he worked his regular assignment. Concededly, it would be compensable if lost during a regular work day. We believe that it logically follows that it should be considered compensable on the rest day and therefore that a sustaining award is in order.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950